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SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): GUIDANCE FOR DISCUSSIONS WITH THE TECHNICAL SECRETARIAT ON SAMPLING AND ANALYSIS DURING SCHEDULE 2 INSPECTIONS

References: (A) The Hague 00180. (B) Technical Secretariat letter L/VER/IVB/140324/08 dated 01 October 2008. (C) (06) State 145877.

¶1. Guidance in paragraphs 7-8.

Overview

¶2. This cable provides information and guidance to the U.S. delegation for use during informal discussions with the Technical Secretariat on the margins of EC-54, 14-17 October 2008. These sampling and analysis discussions are a follow-up to a 19 February 2008 meeting (ref A) on future sampling and analysis activities during Schedule 2 inspections, and the Technical Secretariat response (ref B) to written questions posed in U.S. National Authority letter (NACS#176650) dated August 28, 2008.

Background

¶3. An inspection team from the Technical Secretariat (TS) of the Organization for the Prohibition of Chemical Weapons (OPCW) conducted sampling and analysis activities in the United States during a routine Schedule 2 inspection in November 2007. This inspection was one in a series of inspections involving sampling and analysis that the TS conducted in numerous States Parties during an 18-month trial period. Though a sample was successfully taken and analyzed during the U.S. inspection, concerns were raised by the U.S. Host Team (HT) regarding the rationale for the sampling and the scope of the analysis.

¶4. Participating States Parties met with the TS on 19 February to discuss their experiences with the sampling and analysis inspections during the trial period. The meeting did not allow for an in-depth discussion on the rationale and efficacy of sampling and analysis so the U.S. put down some markers concerning future sampling and analysis activities during routine Schedule 2 inspections and the need for further U.S.-TS discussions.

¶5. The delegation should bear in mind that the USG considers sampling and analysis to be an inspection tool that is intrusive, yet potentially valuable. In our view, however, it is not sufficient for the inspection team to simply cite Paragraph 27 of Part VII of the Verification Annex as the justification for requesting a sample. A request by the inspection team to conduct sampling and analysis activities should be directly linked and relevant to (1) the inspection mandate and (2) site-specific risks, as provided for in paragraph 20 ("... in deciding on the ... intensity of the inspections, the Technical Secretariat shall give due consideration

to the risk to the object and purpose of this Convention posed by the relevant chemical, the characteristics of the plant site and the nature of the activities carried out there, taking into account the respective facility agreement as well as the results of the initial inspections and subsequent inspections"). Before requesting a sample, the team should consider whether less intrusive means, including those proposed by the inspected State Party, would allow it to fulfill its mandate. However, sampling and analysis is only one of several inspection tools and use of this intrusive tool during Schedule 2 inspections in the U.S. should require a rationale beyond simply invoking paragraph 27 even for sampling and analysis in the declared plant(s) that is the focus of the inspection. Further, an inspection team's having brought the sampling and analysis equipment does not mean that they must employ it and thus its use should not be required in the inspection mandate. The delegation should also bear in mind that, per (ref C), "the U.S. expects the TS to...identify reasons during the inspection period as to why taking/analyzing samples is necessary."

¶16. On August 29, 2008 the U.S. delegation delivered a letter to the Technical Secretariat containing questions to help frame the issues. On October 3, 2008 we received the Secretariat's response. The questions and answers are outlined below:

Q1. For any given Schedule 2 facility, what does the TS consider constitutes a rationale or basis for sampling and analysis? What criteria would be used in deciding whether or not to request a sample?

A1. In the Secretariat's view, the rationale and the basis to conduct S&A is clearly spelled out in Part VII, paragraph 27 of the Verification Annex which states that "sampling and analysis shall be undertaken to check for the absence of undeclared scheduled chemicals." The CWC therefore obligates the Secretariat to use this unique verification tool (i.e., sampling and analysis) during all Schedule 2 inspections.

Q2. Does the TS agree that Paragraph 27 should not be cited as the sole grounds for requesting a sample? If the TS view differs from the U.S. view, how does it differ?

A2. In the opinion of the Secretariat and according to the text of the CWC, paragraph 27 provides sufficient grounds for requesting a sample to carry out S&A.

Q3. In the event of an anomalous analysis result (e.g., the detection of one or more undeclared scheduled chemicals) how would the Inspection Team resolve the result and to what degree, if any, would the burden be on the inspected facility? Can a more extensive spectral database than the OCAD be used in the blinded mode, or is this possibility only available in the open mode?

A3. In the event of an anomalous result, such as detecting some undeclared scheduled chemicals, the Inspection Team would work closely with the ISP representatives as well as technical personnel from the inspected site to find a technical explanation for this type of result. In cases where the analytical results are different from what was anticipated, the Inspection Team has been able to work with the ISP in order to identify the appropriate explanation. Currently, an extensive commercial database can only be accessed from GC/MS working in open mode. However, the Secretariat is already working on the development of a "new blinded" operating mode, which, in essence, is a blinded mode that would allow access to a commercial library [of chemicals]. The new operating mode is expected to be available as of next year.

Q4. How often have "false positives" been encountered? What has caused them?

A4. Out of the eighteen Schedule 2 inspections conducted so far involving S&A, eleven of them reported GC/MS matches with the OCAD. An undeclared scheduled chemical showed up on one mission. In the remaining ten missions, there were matches with OCAD reported as "false positives." In one of the ten missions which had "false positives" there were also scheduled chemicals reported at low levels. Of the ten missions in which "false positives" were reported, eight were clarified using the differences in the retention indices and/or spectral analysis. In two cases, the IT in agreement with ISP, accessed the commercial library to discard the identification as being an undeclared scheduled chemical.

Q5. Does the Technical Secretariat envisage an end-state in which sampling and analysis equipment is routinely taken on industry inspections and used only if less intrusive means are unable to achieve the inspection aims? And if the TS view differs from this end-state, how does it differ?

A5. As indicated in the response provided in the introductory paragraphs, the Secretariat was not given the latitude of choosing which verification tool to use during Schedule 2 inspections. The use of access to records does not exclude the use of access to the declared plant(s) or other parts of the plant site. Neither does it exclude the sampling and analysis which according to Paragraph 27 of part VII of the VA "shall be undertaken." This provision of the Convention does not specify any limitations or special circumstances for the use of S&A. Therefore, the Secretariat regards S&A for Schedule 2 inspections as a routine tool to be used during the inspection process - the same as it is for the physical inspection of facilities or the checking of records. S&A is the most direct method to check for the absence of undeclared scheduled chemicals and provides a higher degree of assurance that the plant site is in compliance with the CWC.

Guidance

¶7. Delegation should explore in depth TS views on sampling and analysis during Schedule 2 inspections. Del should draw on background above regarding U.S. views and on the additional points in paragraph 10 during discussions with the Technical Secretariat.

¶8. Please report results of the discussions by cable to Washington.

¶9. Please contact ISN/CB - Richard D'Andrea at (202)647-5091 or via email with any questions.

Additional Points

¶10. Begin Additional Points

- Given the inspection team's obligation under the Confidentiality Annex to "...take into consideration proposals which may be made by the [inspected] State Party...to ensure that sensitive equipment or information...is protected," if a host team offered an alternative, protective proposal, would such a proposal be given serious consideration by the inspection team?

- The OPCW has long recognized the value of the partnership with the chemical industry, and the DG reiterated this during the Second Review Conference. Probably more than any other inspection tool, the U.S.

chemical industry would like to be sure that the Secretariat is using sampling and analysis in a measured way, building on previous inspection successes.

- Given that the inspection-related disagreements encountered during the early industry inspections in the U.S. were successfully overcome, we have every expectation that sampling and analysis issues can be similarly resolved. What do you think would be the best way to do this?

- The TS view in the 1 October letter appears to go beyond in some cases what is necessary or practical from a verification standpoint.

- Is it the TS goal that eventually every Schedule 2 inspection should involve sampling and analysis?

- When will the "new blinded" operating mode for the GC/MS be available next year?

RICE

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End Cable Text